

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

KATHLEEN BALDANZI & GERALD P.
LONG,

On Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

v.

WFC HOLDINGS CORPORATION d/b/a
WELLS FARGO BANK, N.A.,

Defendant.

Civil Action No. 1:07 cv-9551 (LTS)

**UNOPPOSED MOTION TO REINSTATE
DEFENDANT'S MOTION TO DISMISS**

Defendant Wells Fargo Bank, N.A., sued as WFC Holdings Corporation d/b/a Wells Fargo Bank, N.A., respectfully requests reinstatement of Defendant's Motion to Dismiss ("Motion"). Defendant's Motion, originally filed December 20, 2007, was terminated by this Court on January 3, 2008, because of a failure to include certification pursuant to this Court's Individual Practice Rules Paragraph 2.B., which requires the parties of a civil case to "use their best efforts to resolve informally the matters in controversy."

Since January 3, the parties have used their best efforts to resolve this motion informally and have not been able to agree. Counsel have conferred in writing and by phone several times regarding the issues raised in defendant's Motion in an attempt to resolve or narrow the matters in controversy. In particular, the parties have discussed the defendant's contention that Plaintiffs' state law claims are preempted by the National Bank Act. The conferences include:

1. On January 4, 2008, counsel discussed the motion and the Court's January 3 ruling. After discussing the issues, counsel agreed on a schedule to exchange written communications setting forth the parties positions. Plaintiffs' Counsel stated that it had reviewed the motion and was familiar with its arguments. That schedule was confirmed by e-mail correspondence on January 8, 2008.
2. On January 10, 2008, counsel for Defendant sent a letter via mail and e-mail attaching Defendant's previously filed Motion to Dismiss and supporting memorandum of law. The cover letter outlined the factual and legal basis for the preemption of Plaintiff's state law claims and requested that Plaintiffs agree to the relief requested.
3. On January 14, 2008, counsel participated in a telephone conference to discuss various pretrial matters, including the motion. They were not able to resolve the matter, and Plaintiffs' counsel has never indicated that they accept or agree with the legal premise of Defendant's motion.
4. On January 24, 2008, Plaintiffs' counsel sent a letter via mail and e-mail summarizing the legal and factual basis for opposing Defendant's Motion to Dismiss. In follow-up correspondence, Plaintiffs' counsel confirmed they would oppose the Motion to Dismiss, but stated that they did not oppose reinstatement of the Motion.

The parties made a good faith effort to resolve this matter informally, but could not reach a compromise.

A copy of the proposed Motion to Dismiss is attached as Exhibit A. That Motion is identical to the Motion previously filed except the Motion contains a paragraph setting forth the parties attempts to resolve the matter informally. A copy of the memorandum of the proposed Memorandum of Law in Support of Defendant's Motion to Dismiss is attached as Exhibit B. That Memorandum is identical to the Memorandum filed in support of Defendant's Motion.

Defendant seeks to reinstate the previously filed Motion. Plaintiffs do not oppose the motion or the relief requested by the motion to reinstate.

WHEREFORE, Defendant respectfully requests reinstatement of Defendant's Motion to Dismiss.

WELLS FARGO BANK, N.A.,

By its attorneys,

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